

The Honorable David G. Estudillo

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,
Plaintiff,
v.
NICHOLAS MARSHALL,
Defendant.

NO. CR21-5366 DGE

UNITED STATES' SENTENCING MEMORANDUM

NICHOLAS MARSHALL,
Defendant

At only 23 years old, Nicholas Marshall sexually targeted and preyed on vulnerable children over social media. Once he established “relationships” with his victims, he cajoled them into producing and sending him sexually explicit material. Marshall faces this Court having left a trail of traumatized minors in his wake.

This matter is set for a sentencing hearing on April 8, 2022, at 10:00 a.m. On January 6, 2022, Marshall pleaded guilty to four counts of Receipt of Child Pornography in violation of 18 U.S.C. §§ 2252(a)(2) for his conduct involving four separate minors. Due to his serious conduct, the parties are jointly recommending a custodial sentence of 9 years, followed by 15 years' supervised release.

I. The Advisory Guidelines Range

The parties and U.S. Probation agree that the base offense level is 22 under USSG § 2G2.2(a)(2). PSR ¶ 28. The United States also agrees with U.S. Probation's calculation

1 of specific offense characteristics. PSR ¶¶ 29–34. Based on the above calculation, and with
 2 a full 3-level reduction for acceptance of responsibility under USSG § 3E1.1, Marshall’s
 3 total offense level would be 31. PSR ¶ 40. At criminal history category I, the resulting
 4 advisory Guidelines range would be 108 to 135 months.

5 **II. Nature and Circumstances of the Offense**

6 The United States herein incorporates the facts contained in the Complaint (Dkt No.
 7 1), the Plea Agreement (Dkt No. 14) and the Presentence Investigation Report. The United
 8 States further provides the following supplemental facts.

9 For over a year, Nicholas Marshall targeted minors as young as 12-years-old over
 10 social media. Marshall first came to law enforcement’s attention when the mother of a
 11 Texas based 12-year-old discovered her daughter had been exchanging nude pictures and
 12 images with Marshall¹. For several months, Marshall repeatedly pressured the Texas victim
 13 to produce and send him sexually explicit pictures and videos through text messages and
 14 the social media application Discord.

15 During their conversations, the Texas victim asked Marshall if he was okay with
 16 their age difference, given she was 12 and he was 20. Marshall told her that he loved her.
 17 And that as long as they loved each other, that was all that mattered. When UCM asked
 18 what Marshall’s family would think if they found out he was dating a 12-year-old, he said
 19 “they’ll find out in six years.”

20 **Count 1 - MV1: Washington**

21 Marshall communicated with MV1 through Discord and Snapchat when she was
 22 just 13 years old. Despite her young age, Marshall repeatedly asked MV1 if he could visit
 23 her home to have sex with her. When MV1 told Marshall she would consider meeting him
 24 to “hug and kiss” but said she was scared he would kill her, he said “let me fuck you ... let
 25 me come to your house tomorrow and fuck you harder than you can imagine.” MV1 asked
 26 him to stop, to which he said, “I want to choke you.”

27
 28¹ Marshall was charged in Pierce County Superior Court case 19-1-03463-9 with his conduct relating to the Texas
 victim. On January 5, 2022, Marshall was sentenced to 87 months’ incarceration. PSR ¶ 42.

1 During one communication, Marshall pressured and ultimately scared MV1 into
 2 having phone sex with him. During this incident, Marshall turned on his camera function
 3 and watched her masturbate, which was painful for her. She blocked Marshall following
 4 this incident. MV1 believed Marshall would hurt her, her family, and her pets. During the
 5 investigation, MV1 astutely told law enforcement that Marshall wanted a rape relationship
 6 with a child because he could have full control over her and “own” her.

7 **Count 2 - MV2: Wisconsin**

8 MV2 communicated with Marshall over Discord for several weeks in 2019. During
 9 their communication, MV2 told Marshall she was 16, soon to be 17, to which he replied,
 10 “[E]ven now you’re legal...this is perf.” Marshall asked MV2 to send pictures and videos
 11 depicting sexually explicit conduct. MV2 complied with his demands. Marshall received
 12 numerous videos depicting MV2 inserting her fingers into her vagina while in the shower.
 13 In the Discord communications, Marshall asked MV2 if it was too soon for nude pictures
 14 again, and then told her that he would get her pregnant despite her birth control because he
 15 possessed “strong sperm.”

16 **Count 3 - MV3: Texas**

17 MV3 and Marshall communicated over Discord while she was 14 years old.
 18 Marshall offered MV3 \$50 per month in exchange for her producing and sending nude
 19 videos and pictures. When MV3 asked Marshall how he would send her the money since
 20 she was 14, and presumably did not have a bank account, Marshall offered to send her gift
 21 cards from Amazon, Sephora, and Victoria’s Secret. Marshall received multiple images
 22 and videos depicting MV3 inserting fingers or a hairbrush into her vagina, which he stored
 23 on his Samsung cellular device. Like many other victims, Marshall demanded that MV3
 24 call him “daddy.”

25 In addition to pressuring MV3 for nude videos and images, he asked her to find
 26 other young girls who would be willing to send him sexually explicit photos and videos
 27 and/or perform sexually explicit acts with MV3 on camera. Specifically, he wanted others
 28

1 to be “princesses” for him. He also told MV3 exactly what he wanted her and other girls
 2 to do on camera, including “master/slave play” and “Daddy-dom.”

3 MV3 told investigators that her family has always struggled financially, and she
 4 never had money to spend on videogames or presents for friends. And that she viewed
 5 Marshall’s financial offers as a way to make money. Ultimately, Marshall never paid MV3
 6 apart from lingerie he purchased for her from Amazon.

7 **Count 4 - MV4: Canada**

8 MV4 and Marshall initially met on an application called Omegle and communicated
 9 when she was 15 years old. Marshall repeatedly demanded to visit MV4 in Canada, where
 10 she lived, so he could make her “first time amazing.” With MV4, Marshall was particularly
 11 degrading, telling her, “You are my fucktoy. All you are is a wet little hole for me to fuck.
 12 Show me your fuckhole.” From this, MV4 sent him an image of her vagina. Marshall
 13 responded, “It’s nice and wet.” Then, he told MV4 to “Take a video of you sucking your
 14 fingers and pushing them deep into your slave cunt. Make it at least a minute long of you
 15 fucking yourself for your master.” Investigators located a video depicting MV4 inserting a
 16 hairbrush into her vagina on Marshall’s Samsung device.

17 From the Ibuypower computer tower seized from Marshall’s Seattle residence, law
 18 enforcement located multiple images depicting a known actual minor engaged in sexually
 19 explicit conduct. Investigators also discovered 38 videos of minors engaged in sexually
 20 explicit conduct on Marshall’s Samsung cellular device SD card.

21 **III. Sentencing Factors**

22 Online child exploitation is an epidemic with staggering growth as the population
 23 increasingly retreats into the digital world. Images emailed, tweeted, or texted into the
 24 digital realm remain there forever. This results in the repeated victimization of innocent
 25 children.

26 Marshall exploited multiple minors online. Along with inflicting psychological
 27 trauma with his degrading and relentless demands. Marshall, and those like him, strike at
 28 the well-being of our posterity by causing trauma with lifelong implications. This Court

1 stands in the breach as the community’s voice to punish and incapacitate this conduct. And
 2 to send a clear message of deterrence to future child sex offenders.

3 The United States recommends 9 years’ imprisonment, plus 15 years’ supervised
 4 release. This recommended sentence fairly balances all relevant 18 U.S.C. § 3553(a)
 5 factors: the nature and circumstances of Marshall’s offenses; the seriousness of those
 6 offenses; public safety; Marshall’s history; and the need for just punishment and deterrence.

7 By adopting the joint sentencing recommendation of confinement of nine years’
 8 incarceration, followed by 15 years’ supervision, the Court will fulfill these factors.

9 1. *Marshall committed serious offenses against children and just punishment
 10 should be imposed to deter this type of harm.*

11 18 U.S.C. § 3553(a) factors say the sentence should “reflect the seriousness of the
 12 offense, to promote respect for the law, and to provide *just punishment* for the offense.”
 13 (emphasis added). The production of child pornography is both serious and vile. As the
 14 Supreme Court said, “[c]hild pornography harms and debases the most defenseless of our
 15 citizens. Both the State and Federal Government have sought to suppress it for many years,
 16 only to find it proliferating through the new medium of the Internet.” *United States v.
 17 Williams*, 553 U.S. 285, 307 (2008). Congress, too, has explained the difficulties in
 18 successfully combating the “immense” problem of child pornography and the “rapidly-
 19 growing market” for such materials, which is fueled by new technologies that were largely
 20 unavailable when the Sentencing Guidelines were first promulgated. *See* S. Rep. No. 108-
 21 2 (2003).

22 Indeed, despite the “pernicious evil” of the crime, Congress has repeatedly
 23 expressed its dismay about the “excessive leniency” of federal sentences. *See* H. Rep. No.
 24 108-66; S. Rep. No. 104-358, especially in light of the “continuing harm” caused to the
 25 children appearing in such materials, as well as the inflammatory effect it has on the
 26 “desires of child molesters, pedophiles, and child pornographers,” which results in market
 27 demand for child pornography, thereby increasing child victimization. *See* Child
 28 Pornography Prevention Act of 1996, Pub. L. No. 104-208, § 121, 110 Stat. 3009, 3009-

1 26, 27 (1996), codified at 18 U.S.C. § 2251 note; *United States v. MacEwan*, 445 F.3d 249,
 2 250 (3d Cir. 2006); *United States v. Norris*, 159 F.3d 926, 929 (5th Cir. 1998) (“[T]he
 3 victimization of the children involved does not end when the pornographer’s camera is put
 4 away”). Congress has found that child pornography “is a form of sexual abuse which can
 5 result in physical and psychological harm, or both, to the children involved.” Child
 6 Pornography Prevention Act of 1996, 1 Pub. L. No. 104-208, § 121, 110 Stat. 3009 (1996)
 7 (codified as amended at 18 U.S.C. § 2251). Congress concluded that “where children are
 8 used in its production, child pornography permanently records the victim’s abuse” resulting
 9 in “continuing harm by haunting those children in future years.” *Id.*

10 Without doubt, the severity of this crime calls for a lengthy sentence, but so does
 11 the additional sentencing factors this Court considers. Prior to this investigation, resulting
 12 in both state and federal charges, Marshall had no criminal history. That lack of criminal
 13 history, however, is countermanded by his numerous victims and relentless pattern of
 14 deviant behavior. His pattern of crimes against impressionable members of our population
 15 shows no regard for their innocence or the laws of our nation. Therefore, there is a strong
 16 need to promote respect for the law through adequate punishment for Marshall. The
 17 calculated and cruel sexual exploitation of all four charged victims demonstrates the need
 18 to promote respect for the law by Marshall and others who have similar desires to sexually
 19 exploit children. Just punishment therefore, is nine years’ incarceration, followed by 15
 20 years’ supervision, concurrent to his Pierce County sentence.

21 By sexually exploiting each victim, Marshall has left an indelible mark that may
 22 have significant long-term health consequences. In addition to the harm suffered by each
 23 victim, Marshall’s actions also inflict untold harm to each victim’s community. The
 24 secondary trauma to those that love the victims and are entrusted to ensure their wellbeing,
 25 including family, friends, teachers, and counselors, will never be truly known.

26 Given the potential for lifelong harm to each victim and their loved ones, what then,
 27 is *just punishment*. Ensuring that Marshall cannot abuse additional minors is certainly just.
 28

1 Removing from him the opportunity to traumatize other minors is certainly just. A sentence
 2 of 9 years, although lengthy, is just punishment.

3 Based on the egregious nature of Marshall's criminal misconduct, there is also a
 4 compelling need to deter others who would exploit and abuse children. Marshall is young,
 5 and as demonstrated from the PSR and letters of support from his pastor and employer, has
 6 the potential to lead a law-abiding life. A nine-year sentence will hopefully deter Marshall
 7 from similar behavior upon his release. Beyond specific deterrence for Marshall, is
 8 deterrence for other offenders. Unfortunately, the stark reality borne out by countless
 9 studies, investigations and prosecutions show there are simply too many individuals wired
 10 to abuse children to ever eliminate child exploitation. As a result, it is vitally important that
 11 these would-be offenders understand the steep cost of acting on their deviant desires. The
 12 law must send a clear and unmistakable message of specific and general deterrence: that
 13 society will not tolerate such perverted cruelty and violence. And for those who choose to
 14 engage in it—will be met with lengthy custodial sentences.

15 2. *Marshall's conduct and character despite having a good upbringing is
 16 alarming; him serving a lengthy sentence will protect the community.*

17 Marshall is different from many offenders who come before the Court in these types
 18 of cases. He did not experience abuse or neglect, his family is financially stable, and he felt
 19 loved and supported by his parents. PSR ¶ 50. While he had early academic issues, after
 20 receiving an Asperger's diagnosis, he enrolled and was successful in an educational
 21 program tailored to his diagnosis. His successful career following graduation also
 22 demonstrates his potential.

23 While Marshall appears to have struggled socially, this cannot be a justification for
 24 seeking out and dominating impressionable minors. During his communications with
 25 MV1, he found out she would be attending summer camp. He experienced momentary
 26 panic because he was a summer camp counselor and thought she would be his camper.
 27 Then, he communicated that his concern was that if he and MV1 were at the same camp,
 28 it would make his life hell because he would want to have sex with her all week. Given his

1 prolific online sexual exploitation of victims the same age as his campers, it is alarming
2 that Marshall sought out to be surrounded by children as a camp counselor. Imposing nine
3 years' incarceration will be the most effective tool to protect future victims and the
4 community.

5 **IV. Conclusion**

6 Marshall made the choice to repeatedly prey and seek out children to satisfy his
7 distorted and revolting sexual desires. He did so in an abhorrent, degrading, and disgusting
8 manner. Still, the government wants Marshall to find rehabilitation. And the government
9 hopes what Marshall's pastor wrote, that he "desires to become a mature and responsible
10 young man" is true. Conversely, Marshall's crimes were beyond irresponsible. And they
11 carry lifelong pain and trauma for the four victims.

12 Therefore, this Court should adopt the joint nine-year sentencing recommendation
13 from Marshall and the government. This sentence is sufficient, but not greater than
14 necessary to achieve justice.

15 DATED this 1st day of April, 2022.

16 Respectfully submitted,

17
18 NICHOLAS W. BROWN
19 United States Attorney

20 /s/Erika J. Evans
21 ERIKA J. EVANS
22 Assistant United States Attorney
23 United States Attorney's Office
24 1201 Pacific Avenue, Suite 700
Tacoma, Washington 98402
Email: Erika.Evans@usdoj.gov